THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0760, Patrick F. Bigg & a. v. Loon Mountain Recreation Corporation & a., the court on July 11, 2007, issued the following order:

The plaintiffs, Patrick F. Bigg and Susan P. Bigg, appeal the dismissal of their action against the defendants, Loon Mountain Recreation Corporation and Booth Creek Ski Holdings, Inc. They argue that the trial court erred in finding that: (1) Patrick Bigg was a skier for the purposes of RSA chapter 225-A; (2) the jump giving rise to Bigg's claim was a variation in terrain; (3) the obligations set forth in RSA 225-A:23, IV, did not apply to the jump; and (4) the defendants' release was enforceable. We affirm.

When reviewing a trial court's order on a motion to dismiss, we consider whether the allegations in the plaintiffs' writ are reasonably susceptible of a construction that would permit recovery. Sweeney v. Ragged Mt. Ski Area, 151 N.H. 239, 240 (2004). We assume all facts pleaded in the writ are true and construe all reasonable inferences from them in the plaintiffs' favor; we then consider the facts against the applicable law. Id. If the facts fail to constitute a basis for legal relief, we affirm the order granting the motion to dismiss. Id. at 240-41.

Having reviewed the record before us, we conclude that the trial court correctly determined that: (1) Bigg was a skier as both alleged in his writ and defined by statute, see RSA 225-A:2, II (2000); (2) the jump was a variation in terrain as defined in RSA 225-A:24, see Cecere v. Loon Mt. Corp., 155 N.H. __, __ , 923 A.2d 198, 204 (2007); and (3) the obligations set forth in RSA 225-A:23 did not apply to the jump giving rise to Bigg's claim; see id. at ___, 923 A.2d at 206-07. Accordingly, the trial court did not err in concluding that Bigg's injuries resulted from an inherent risk of skiing and in dismissing the plaintiffs' negligence claims. See Nutbrown v. Mount Cranmore, 140 N.H. 675, 680 (1996) (under RSA 225-A:24, I, injury caused by inherent risk of skiing is not actionable and suit based upon such injury should be dismissed).

We will assume without deciding that the remaining claims asserted by the plaintiffs under the Consumer Protection Act, see RSA ch. 358-A, are not subject to the immunity provisions of RSA 225-A:24. The plaintiffs alleged that the defendants represented that their facility "was a state of the art facility safe for use by patrons" and that this representation was a misrepresentation that violated RSA chapter 358-A. This allegation, however, does not meet the standard that we have previously articulated when determining whether a

commercial action violates the Act. See Milford Lumber Co. v. RCB Realty, 147 N.H. 15, 17 (2001) ("The objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce.").

The parties' respective motions to file late authority are granted. In light of our ruling above, we need not decide the defendants' motion to strike portions of the plaintiffs' brief and appendix. The plaintiffs' request for attorney's fees and costs is denied.

Affirmed.

BRODERICK, C.J., and DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk